

**TESTIMONY OF THE HONORABLE CHADWICK "CORNTASSEL" SMITH
PRINCIPAL CHIEF OF THE CHEROKEE NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON
THE INDIAN RESERVATION ROADS (IRR) PROGRAM
AND THE SURFACE HIGHWAY REAUTHORIZATION LEGISLATION**

June 4, 2003

Good morning Mr. Chairman and Members of the Committee, my name is Chadwick Smith, and I am the Principal Chief of the Cherokee Nation. With me are Jackie Bob Martin, Chairman of the Resources Committee of the Cherokee Nation Tribal Council, Harley Buzzard, Director of Roads, and Casey Sixkiller, Legislative Officer in our Washington Office. We appear here on behalf of the Cherokee Nation to express our strong support for the tribally-developed transportation innovations and improvements reflected in the many Tribal transportation bills currently under consideration by this Committee. We are pleased to see common sense ideas, innovative proposals and the promise of greater funding reflected in your bill Mr. Chairman, S. 281, the "Indian Tribal Surface Transportation Improvement Act of 2003," Senator Bingaman's S. 725, the "Tribal Transportation Program Improvement Act of 2003," as well Senator Johnson's "Tribal Transportation Program Improvement Act of 2003." We urge the members of this Committee to work closely with your colleagues in the Environment and Public Works, Banking and Commerce Committees to ensure that our mutual goals for the IRR Program are carried forward into the Senate's broader surface highway reauthorization legislation.

I realize this Committee will hear from many witnesses today so I will keep my remarks brief. I want to focus on the four issues I believe are most crucial in developing this reauthorization legislation: economic development, safety, funding equity and program efficiency. While I will only touch on the high points of these issues, I have appended to this testimony reports and other data to support my remarks, and ask that they be made a part of the Hearing record. I also respectfully ask all Members of this Committee and your staffs to continue working with our tribal transportation experts to refine the reauthorization legislation so that it delivers on its promises and avoids unintended consequences.

Economic Development

The Cherokee Nation represents over 237,000 tribal citizens, nearly half of whom live within our 7,000 square mile jurisdictional area. According to the 2000 census, the Cherokee Nation jurisdictional area is home to 462,327 American citizens. Whether or not these residents are also citizens of the Cherokee Nation, all these people benefit from the jobs, infrastructure improvements and business opportunities that the Cherokee Nation has brought to our corner of Northeastern Oklahoma. Through our successful business ventures, we are now the number one employer in our region. The Honorable Larry E. Adair, Speaker of the House in the Oklahoma State Legislature, has recognized the impact of the Nation's infrastructure building in Oklahoma. I have a copy of his letter and ask that it be included in the record.

Despite these positive advances, there is still far too much poverty in our area. According to the 2000 census, thirteen percent of families and over sixteen percent of individuals live below the poverty line. Like many Tribal leaders, I have seen the great economic, health, safety and societal benefits that come when our transportation systems are improved and our infrastructure is properly maintained, as well as the great hardships that occur when our transportation systems and infrastructure

are neglected. Like you, we believe the reauthorization process is one of the most important legislative tasks facing this Congress. It provides a unique opportunity to help jump-start our faltering economy. We have all seen the statistics developed by the United States Department of Transportation that every dollar invested in transportation infrastructure yields a six-fold increase in the Nation's economy and helps generate many new jobs. This is especially relevant for Tribes.

Because our Tribal transportation infrastructure has been so badly neglected and has hampered Tribal economies for far too long, there can be no doubt that the targeting of additional financial resources, innovative financing techniques and greater Tribal control over transportation programs will yield even greater results in Indian country. Perhaps Secretary Mineta said it best in his testimony to the Senate Committee on Environment and Public Works last year. He noted a lesson he learned as Mayor of San Jose, California three decades ago, saying:

I learned that the tool that made the most difference in my community was transportation. Nothing else had as great an impact on our economic development, growth patterns, and quality of life. What I have found in the years since is that this is true not just locally, but also nationally. A safe and efficient transportation system is essential to keeping people and goods moving and cities and communities prosperous.

According to every measure, including the testimony of the Bureau of Indian Affairs ("BIA") and Federal Highway officials and this Committee's own report on the state of Tribal transportation in 2000, transportation infrastructure in Indian country continues to lag far behind the rest of the Nation:

- Over two-thirds of the BIA road system remains dirt roads;
- Nearly one-quarter of the 779 IRR bridges are rated in an unsafe, deficient condition;
- IRR roads and bridges must also be reconstructed well in advance of their design life due to a lack of adequate maintenance funds;
- The BIA receives a paltry \$26 million per year to address the maintenance needs of all 562 federally recognized Tribes, covering nearly 100 million acres of Indian lands.

These are not my statistics; they come from the Federal officials responsible for implementing the IRR Program and from this Committee's own reports. According to BIA and Tribal transportation experts, more current information puts the IRR construction backlog at somewhere between \$11 billion to \$25 billion and growing.

Under these conditions, it is not surprising that Tribes have a difficult time attracting businesses, jobs and other investments to their Territories. We must already overcome the myths and prejudices that some people have about doing business in Indian country. Our job is made all the more difficult when prospective investors are justifiably concerned they will have to put up with Third World-type transportation infrastructure just to get their goods and services to market. But with a relatively modest financial investment and common sense improvements to federal transportation laws, Congress and the Administration can help Tribes turn areas that are often pockets of poverty into tremendous engines of economic growth. This is particularly true in rural America. Infrastructure improvements made by Tribes benefit Indians and non-Indians alike. And unlike most rural areas in America, rural Indian communities are growing rapidly according to the 2000 Census. If rural areas cease to function as vital economic centers, we will only see increased congestion and greater concentration of populations in

urban areas. As we have seen in our own part of Northeastern Oklahoma, Tribal governments can help stimulate rural economies, which is good for the long term economic health of our Nation.

Transportation Safety

The Administration's reauthorization bill, SAFETEA, properly focuses on reducing traffic injuries and fatalities and increasing transportation security on our Nation's roadways. We applaud the Administration's focus on transportation safety and security, as well as its proposal to create a new BIA safety component within the Federal Lands Highway Program. However, much more can and should be done to improve transportation safety and security in Indian country. We support the proposals made by Chairman Campbell, as well as Senators Bingaman and Johnson, to provide Tribes with direct access to federal transportation safety funds. It is past time for the Federal government to make better use of Tribal governments to help solve this traffic safety crisis. The statistics on traffic injuries and fatalities on Tribal roadways are truly appalling. This Committee's own report in 2000 concluded that the "unsafe condition" of many IRR roads and bridges has led to an "annual fatality rate on the IRR system [of] more than four times [that of] the national average." Likewise, a recent General Accounting Office report found that while urban roads receive the lion's share of federal transportation funding, more people travel and are killed on rural roads. The Report states that "[w]hen adjusted for miles traveled, the fatality rate from traffic accidents on rural roads was nearly 2.5 times greater than the fatality rate from accidents on urban roads."

While statistics are important to make our point, they cannot adequately capture the grief of a Cherokee citizen who has lost a loved one in a preventable traffic accident. A few years ago, a full-blood Cherokee named Gerald Blackbear lost his life in a car crash on Fairview/Eucha Bridge in the northern portion of the Cherokee Nation. This bridge is situated on a vital roadway that provides access to health clinics, shopping, and employment, and is a school bus route for the local school. The road and bridge was a small, two-lane roadway that had dangerous turns and no guardrails. While the Nation has since received funding to replace the Eucha Bridge, it was not soon enough to prevent the unnecessary death of Gerald Blackbear. We can and must do better.

In these frightening and turbulent times, we must do all we can to protect *all* our citizens. Many Cherokee Nation and Native American veterans have paid the ultimate price to protect our freedoms and our security. Most recently, the whole country mourned the tragic death of Lori Piestewa, the first American woman to be killed while serving in combat, and a member of the Hopi Nation. Given these new dangers and the many billions we are spending to counter them, targeting \$50 million dollars a year to help Tribal governments reduce thousands of needless deaths on our Nation's roadways seems like a small price to pay to accomplish such a great good for our country. In my opinion, nothing in this Reauthorization legislation is more important.

Funding Equity

It has been said, "Great nations, like great men, keep their promises." As I see it, Congress and the Administration have overlooked and underfunded tribal transportation infrastructure development, transportation safety programs, transit systems and maintenance programs for too long. According to this Committee's own 2000 report, the IRR system comprises 2.63% of the Federal-Aid system but receives less than 1% of the surface highway funding out of the National Highway Trust

Fund. We are asking for equity. Tribes currently receive almost nothing at all from the Highway Trust Fund and the Transit Fund to cover their safety, transit or maintenance activities. We have already discussed how this funding disparity prevents Tribes from reaching their highest economic potential, to the detriment of Indians and non-Indians alike. But simple fairness is also a consideration that should be kept in mind when this Committee marks up its Tribal Reauthorization legislation. Time and again Indian Nations have been asked to give up our lands and resources for the good of the Country, in exchange for the Federal government's promises to look out for our best interests as our trustees. Too often those promises were not kept.

The members of this Committee are well aware that the IRR system is woefully underfunded, both for construction and for maintenance. As reflected in the bills currently before this Committee, the funding levels for the IRR Program, as well as for the proposed Tribal safety, transit and maintenance programs only begin to redress this funding inequity. Given the great unmet transportation needs in Indian country, even the Tribal funding proposals are quite modest by any reasonable measure. For example, even if the Congress dedicated \$1 billion per year for Tribal transportation programs, out of the total \$300-400 billion reauthorization package, we would only begin making a dent in the huge construction and maintenance backlogs that everyone recognizes exists in Indian Country. But at these higher funding levels, we would at least stop losing ground. While I recognize the current budget constraints facing Congress, I believe the transportation funding increases proposed by the Tribal proposals and several members of this Committee are modest in comparison with the need and are an appropriate step in the right direction. Cherokee Nation itself faces a similar challenge in budgeting scarce resources, but has determined roads and infrastructure to be a high priority by allocating substantial tribal funds to the program every year to supplement the IRR program. While this is evidence of our commitment to safer roads and bridges, it is a long way from addressing the backlog for transportation construction.

Likewise, Congress should return the IRR Program's exemption from the obligation limitation deduction, as had always been the case prior to the passage of TEA-21. Tribes throughout the country, the Inter-Tribal Council of the Five Civilized Tribes, the National Congress of American Indians and many other regional tribal organizations all strongly support this recommendation. While for States the obligation limitation is a temporary delay in full funding, the obligation limitation for IRR *permanently* removes \$30-\$35 million annually from the program, which is ultimately expended for programs other than IRR. The Cherokee Nation therefore urges the Members of this Committee to help fulfill the promises our Nation has made to Indian people and bring our Tribal transportation systems up to the minimum level of other road systems in this country. Restoring the IRR Program's exemption from the obligation limitation is one no-cost way of increasing annual funding to the program.

Program Efficiency

When the Federal-Aid highway system was first developed in the 1950s, the Federal government's official Indian policy supported the termination of the trust responsibility and the elimination of federal recognition for Tribal governments. During this disastrous period, federal transportation laws completely overlooked sovereign Tribal governments and instead funneled money intended to improve tribal transportation systems through to the States and the BIA. While this approach may have had some logical basis in the 1950s, it certainly no longer makes sense given the current federal policy of promoting Tribal self-determination and self-governance in the administration

of Federal programs serving Indians. Yet, the consequence of maintaining the old funding structure has cost Federal, State and Tribal officials countless hours and many millions of dollars in needless transaction costs. It has also created great frustration on all sides because the laws too often do not allow outcomes that all parties seek. This Committee has an important opportunity in this legislation to bring our federal transportation laws in line with current Indian policy.

More than thirty years ago, Congress and the Administration embarked on a bold policy of promoting Indian self-determination and self-governance, while continuing to maintain and strengthen the federal trust responsibility. Rather than seeking the termination of Tribal governments, Congress and the Administration recognized that respecting and strengthening Tribal governments would better serve the country. Without doubt, this has been the most successful federal Indian policy in our Nation's history, and many Indian tribes have moved from abject poverty to become strong, vital governments. We successfully administer hospitals, schools, police forces, emergency services, tribal courts, and *yes* - transportation departments.

Tribal governments have accomplished this amazing turnaround through the vision and dedication of their leaders, the hard work of their members and, *no less important*, the wise policy choices of leaders of Congress and the Administration. Without Congress - and the Administration's decision to enact the Indian Self-Determination and Education Assistance Act, and later the Self-Governance amendments, it would have been far more difficult for most Tribal governments such as the Cherokee Nation to achieve the governmental capacity we now possess. Likewise, your efforts in passing the Intermodal Surface Transportation Efficiency Act ("ISTEA") and TEA-21 to recognize and support Tribal governments' important role in statewide transportation planning have helped spur a vast improvement in our Tribal capacity to deliver transportation services to the Indian and non-Indian residents in our jurisdictional area.

The Cherokee Nation, along with the Red Lake Band of Chippewa Indians, spent six years – and dedicated significant financial resources – first conceiving of the idea of an IRR Self-Governance Demonstration Project, and then working with the BIA and the Federal Lands Highway program to make our vision a reality. We spent years in meetings, discussions and negotiations with BIA and Federal Lands Highway officials simply to get these federal agencies to do what we believe the law clearly required them to do all along: provide tribes with their fair share of the federal resources and the authority necessary to administer the IRR program directly for the benefit of their own members. In so doing, we never asked for more than our share, and we never sought to remove the BIA or the Federal Lands Highway program from their proper role as our partners or as overseers of the larger IRR program. Still, we too often faced delays and foot-dragging.

We have experienced similar problems during the four-year odyssey of the IRR Program Negotiated Rulemaking Committee and the recent publication of the IRR Bridge Program regulations. Despite unified Tribal recommendations for improving the IRR Program - through such common sense recommendations as using "advance funding" innovative financing techniques to "grow" total program funding and dedicate tribal savings to provide additional IRR Program services - federal officials have so far refused to accept these Tribal proposals in the final regulations. Likewise, despite a coordinated and time-consuming effort by Tribal transportation experts to develop detailed Tribal comments to the proposed IRR Bridge Program regulations, the Federal Lands Highway Program waited for nearly four years and then simply published final regulations that were nearly identical to the initial proposed

regulations issued in 1999. In the process, Tribal comments and recommendations were ignored altogether. These and many other examples have convinced us that more direction is needed from Congress before we will be able to break the logjam with some Administration officials. Our goal is to streamline the IRR Program and make it more efficient. The legislative proposals reflected in the Campbell, Bingaman and Johnson bills are based in large measure on the hard fought experience of our Tribal transportation experts and planners. Thank you for listening to us. We recognize that our funding is limited and therefore ask that we at least be provided the tools to maximize those limited resources. We fully support these IRR Program and surface transportation program efficiencies and ask all Members of Congress to carry them forward in the broader reauthorization legislation.

Conclusion

The Cherokee Nation is proud to be a leader in the nationwide Tribal effort to reform the Indian Reservation Roads (IRR) Program in order to make it more efficient and more responsive to the needs of all Tribal communities. As one of the first two Tribes in the country to bring self-governance principles to the IRR Program, we have seen firsthand the positive benefits these grass roots Tribal proposals can bring to our people and our communities. It is now time to move forward during this next reauthorization period to unleash the true productive power of the First Nations of this country. We need sensible investments in our transportation infrastructure and a greater commitment to the principles of Tribal self-determination and self-governance in the delivery of transportation programs. I am confident that the Members of this Committee trust in the ability of Tribal governments to carry out coordinated intermodal tribal transportation programs. Your equal commitment to reforming the federal laws that hamper our ability to carry out these federal transportation programs will redound to the great benefit of our Nation as a whole.

The time has since long passed when the BIA or the States should be allowed to make transportation planning decisions for Tribes, or dole out scarce resources on a costly and inefficient project-by-project basis. Under the current transportation funding structure and laws, far too much time and money is wasted on unproductive transaction costs because we are forced to jump through too many bureaucratic hoops. The inefficient triangular funding structure that requires Tribes to go through the States to access federal funds also creates unnecessary tensions between State and Tribal governments. State laws typically are not well suited to transfer federal funds to Tribes on a truly government-to-government basis. Rather, State contracting laws most often treat Tribes not as sovereign governments, but as subordinate subcontractors answerable in State courts for the administration of these federal funds.

It is problems like these that led Tribal leaders and transportation experts from around the country to form a nationwide Tribal Reauthorization Task Force. The Tribal Task Force has developed and proposed legislative solutions - many of them no-cost technical fixes - to address these problems in the next reauthorization legislation. As reflected in the attached chart, the Cherokee Nation supports nearly all of these Tribally-developed proposals, and we commend all the Senators who have incorporated these ideas into their own reauthorization bills. We are hopeful that Chairman Inhofe and Chairman Campbell will work closely together to ensure that their two Committees develop tribal reauthorization legislation that will have the broadest support possible of all Tribal governments.

As the Cherokee Nation has shown, Tribes are often far better equipped to administer

transportation programs for the benefit of our own people. Just as there are no Republican roads or Democratic bridges, there has always been bipartisan support on this Committee and in the Congress for the principle that sovereign local governments, whether State or Tribal, are much more knowledgeable about local conditions and much more accountable to their citizens than any federal bureaucrat sitting behind a desk in Washington, no matter how hard working or well-meaning that federal official may be.

The Cherokee Nation applauds this Committee's effort to ensure that the many positive benefits of the Indian Self-Determination Act apply with full force to the IRR Program. When Congress and the Administration have trusted Tribal governments to deliver top quality government services - and have passed laws to help them do just that (often despite the resistance of a intransigent federal bureaucracy) - Tribal governments have always responded positively to each new challenge, to the great benefit of our Nation as a whole. In this time of crisis, if Congress, the Administration, States and Tribal governments take their responsibilities seriously, conduct themselves with respect and truly honor the government-to-government relationship, we will become an even greater example to the rest of the world, showing that *many* sovereign governments can peacefully coexist within a single central government on the basis of self-determination, self-governance, mutual respect *and* mutual responsibility.

Chairman Campbell and Members of the Committee, we hope to work closely with you and your staff as you mark up the many tribal legislative proposals for the next surface highway reauthorization legislation. We hope to build on the successful government-to-government transportation partnerships that were the innovative hallmarks of the ISETEA in 1991 and of TEA-21 in 1997.

We have operated our own Tribal Transportation program since 1994. When TEA-21 first passed, Congress clarified that there is nothing special or different about the IRR Program that suggests Tribes cannot be trusted to act prudently when building and maintaining our roadways. Chairman Campbell, when you first introduced your Tribal transportation bill in 2000, as S. 2283, you explained that "for Indian communities, an efficient federal roads financing and construction system holds the key to healthier economies and higher standards of living for their members." I could not agree more and therefore urge the Committee to adopt your proposals as well as those reflected in the tribal reauthorization bills introduced by Senator Johnson and Senator Bingaman.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify in strong support of this important legislation.